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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Stacy Berkowitz, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

Aargon Collection Agency, Inc.,

Defendant.

Docket No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Stacy Berkowitz, individually and on behalf of all others similarly situated (hereinafter referred to as "*Plaintiff*"), by and through the undersigned counsel, complains, states and alleges against Aargon Collection Agency, Inc. (hereinafter referred to as "*Defendant*"), as follows:

INTRODUCTION

1. This action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (the "FDCPA").

JURISDICTION AND VENUE

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).

3. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

4. At all relevant times, Defendant conducted business within the State of New York.

PARTIES

5. Plaintiff Stacy Berkowitz is an individual who is a citizen of the State of New York residing in Suffolk County, New York.

6. Plaintiff is a natural person allegedly obligated to pay a debt.

7. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

8. On information and belief, Defendant Aargon Collection Agency, Inc., is a Nevada Corporation with a principal place of business in Clark County, Nevada.

9. Defendant regularly collects or attempts to collect debts asserted to be owed to others.

10. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

11. The principal purpose of Defendant's business is the collection of such debts.

12. Defendant uses the mails in its debt collection business.

13. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

THE FDCPA AS IT RELATES TO THE CLAIMS HEREIN

14. Congress enacted the FDCPA upon finding that debt collection abuse by third party debt collectors was a widespread and serious national problem. *See S. Rep. No. 95-382, at 2 (1977) reprinted in U.S.C.C.A.N. 1695, 1696; 15 U.S.C § 1692(a).*

15. The purpose of the FDCPA is to protect consumers from deceptive or harassing actions taken by debt collectors, with the aim of limiting the suffering and anguish often inflicted by independent debt collectors. *Kropelnicki v. Siegel*, 290 F.3d 118, 127 (2d Cir. 2002); *Russell v. Equifax A.R.S.*, 74 F.3d 30, 34 (2d Cir. 1996).

16. To further these ends, “the FDCPA enlists the efforts of sophisticated consumers ... as 'private attorneys general' to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others.” *Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 91 (2d Cir. 2008).

17. As such, the circumstances of the particular debtor in question have no bearing as to the question of whether there has been a violation of the FDCPA. *See Easterling v. Collecto, Inc.*, 692 F.3d 229, 234 (2d Cir. 2012). Indeed, it is not necessary for a plaintiff to show that he or she was confused by the communication received. *Jacobson*, 516 F.3d at 91. Likewise, the plaintiff consumer's actions or inaction in response to a communication from a debt collector are irrelevant. *Thomas v. Am. Serv. Fin. Corp.*, 966 F. Supp. 2d 82, 90 (E.D.N.Y. 2013).

18. Instead, “the test is how the least sophisticated consumer—one not having the astuteness of a 'Philadelphia lawyer' or even the sophistication of the average, everyday, common consumer—understands the notice he or she receives.” *Russell*, 74 F.3d at 34.

19. If a debt collector's communication is “reasonably susceptible to an inaccurate reading” by the least sophisticated consumer, it violates the FDCPA. *DeSantis v. Computer Credit, Inc.*, 269 F.3d 159, 161 (2d Cir. 2001). Similarly, a communication violates the FDCPA if it is “open to more than one reasonable interpretation, at least one of which is inaccurate,” or if the communication “would make the least sophisticated consumer uncertain as to her rights.” *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993); *Jacobson*, 516 F.3d at 90.

20. The FDCPA is a strict liability statute, and a debt collector's intent may only be considered as an affirmative defense. 15 U.S.C. § 1692k(c); *Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 135 (2d Cir. 2010). Likewise, “the degree of a defendant's culpability may only be considered in computing damages.” *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 63 (2d Cir. 1993). A single violation of the FDCPA to establish civil liability against the debt collector. *Id.*

ALLEGATIONS SPECIFIC TO PLAINTIFF

21. Defendant alleges Plaintiff owes a debt (“the alleged Debt”).

22. The alleged Debt is an alleged obligation of Plaintiff to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

23. The alleged Debt does not arise from any business enterprise of Plaintiff.

24. The alleged Debt is a “debt” as defined by 15 U.S.C. § 1692a(5).

25. At an exact time known only to Defendant, the alleged Debt was assigned or otherwise transferred to Defendant for collection.

26. At the time the alleged Debt was assigned or otherwise transferred to Defendant for collection, the alleged Debt was in default.

27. In its efforts to collect the alleged Debt, Defendant contacted Plaintiff by telephone on December 28, 2019, at approximately 7:10 p.m.

28. Defendant left a voicemail message (“the Message”) for Plaintiff.

29. The Message announced the call was from “Aargon Agency.”

30. The Message conveyed information regarding the alleged Debt.

31. The Message is a “communication” as defined by 15 U.S.C. § 1692a(2).

32. The deprivation of Plaintiff's rights will be redressed by a favorable decision herein.

FIRST COUNT
Violation of 15 U.S.C. § 1692g(a)(1)

33. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

34. 15 U.S.C. § 1692c(b) provides that without the prior consent of the consumer given directly to the debt collector, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

35. The Message announced the call was from “Aargon Agency.”

36. The Message announced the call was from a debt collector.

37. The Message announced that the Defendant was calling in an attempt to collect a debt.

38. Plaintiff played the Message on speakerphone.

39. Plaintiff's boyfriend was in the same room.

40. Prior to listening to the Message, Plaintiff had no way of knowing that Defendant had left the Message.

41. Prior to listening to the Message, Plaintiff had no way of knowing that there was a message from a debt collector.

42. The Message gave no warning or other notice that Plaintiff should listen to the Message in private.

43. The Message gave no warning or other notice that the Message was private or personal in nature.

44. The Message had no pause or other break that would have allowed Plaintiff to discontinue listening to the message if a third-party was present.

45. Plaintiff's boyfriend heard the Message.

46. Plaintiff's boyfriend was not aware of the Debt.

47. Plaintiff never gave Defendant consent to communicate with any third party in connection with the collection of the Debt.

48. Plaintiff did not give Defendant express permission to leave messages on the telephone that the Defendant called.

49. Defendant's conduct invaded the privacy protections afforded to Plaintiff through the FDCPA

50. Defendant's actions as described herein violate 15 U.S.C. § 1692c(b).

51. Plaintiff was caused significant embarrassment and humiliation as a result of the Defendant's conduct.

52. For all of the foregoing reasons, Defendant violated 15 U.S.C. §§ 1692c(b) and is liable to Plaintiff therefor.

SECOND COUNT **Violation of 15 U.S.C. § 1692g**

53. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

54. The Message was the initial communication Plaintiff received from Defendant concerning the alleged Debt.

55. 15 U.S.C. § 1692g provides that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing certain enumerated information, notices and disclaimers. 15 U.S.C. § 1692g(a)(1)-(5).

56. Defendant was required to send Plaintiff the aforementioned written notice within five days of the telephone call to Plaintiff.

57. Defendant failed to send the required written notice to Plaintiff within five days of the telephone call to Plaintiff.

58. Defendant's failure to send the required written notice to Plaintiff within five days of the telephone call to Plaintiff is a violation of 15 U.S.C. § 1692g.

59. For the foregoing reasons, Defendant violated 15 U.S.C. § 1692g and is liable to Plaintiff therefor.

CLASS ALLEGATIONS

60. Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated in the State of New York.

61. Plaintiff seeks to certify two classes of:

- i. All consumers to whom Defendant left a collection voicemail message without prior consent and; substantially and materially similar to the message left with the Plaintiff, which message was left on or after a date one year prior to the filing of this action to the present.
- ii. All consumers to whom Defendant failed to send a written notice as required by Section 1692g of the FDCPA, on or after a date one year prior to the filing of this action to the present

62. This action seeks a finding that Defendant's conduct violates the FDCPA, and asks that the Court award damages as authorized by 15 U.S.C. § 1692k.

63. The Class consists of more than thirty-five persons.

64. Plaintiff's claims are typical of the claims of the Class. Common questions of law or fact raised by this action affect all members of the Class and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

65. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, and a risk that any adjudications with respect to individual members of the Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests. Defendant has acted in a manner applicable to the Class as a whole such that declaratory relief is

warranted.

66. Plaintiff will fairly and adequately protect and represent the interests of the Class. The management of the class is not extraordinarily difficult, and the factual and legal issues raised by this action will not require extended contact with the members of the Class, because Defendant's conduct was perpetrated on all members of the Class and will be established by common proof. Moreover, Plaintiff has retained counsel experienced in actions brought under consumer protection laws.

JURY DEMAND

67. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests judgment be entered:

- a. Certifying this action as a class action; and
- b. Appointing Plaintiff as Class Representative and Plaintiff's attorneys as Class Counsel;
- c. Finding Defendant's actions violate the FDCPA; and
- d. Granting damages against Defendant pursuant to 15 U.S.C. § 1692k; and
- e. Granting Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k; and
- f. Granting Plaintiff's costs; all together with
- g. Such other relief that the Court determines is just and proper.

DATED: February 13, 2020

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